

IC 24-4.4-2

Chapter 2. Miscellaneous

IC 24-4.4-2-101

Short title

Sec. 101. This chapter shall be known and may be cited as the First Lien Mortgage Lending Act - Miscellaneous.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-2-201

Duty to provide payoff amount; liability for failure to provide; prepayment penalty prohibited for adjustable rate mortgages; short sales

Sec. 201. (1) A creditor or mortgage servicer shall provide an accurate payoff amount for a first lien mortgage transaction to the debtor not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate payoff amount. A creditor or mortgage servicer who fails to provide an accurate payoff amount is liable for:

(a) one hundred dollars (\$100) if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

(b) the greater of:

(i) one hundred dollars (\$100); or

(ii) the loan finance charge that accrues on the first lien mortgage transaction from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate payoff amount is provided;

if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer fails to comply with subdivision (a).

(2) This subsection applies to a first lien mortgage transaction, or the refinancing or consolidation of a first lien mortgage transaction, that:

(a) is closed after June 30, 2009; and

(b) has an interest rate that is subject to change at one (1) or more times during the term of the first lien mortgage transaction.

A creditor in a transaction to which this subsection applies may not contract for and may not charge the debtor a prepayment fee or penalty.

(3) This subsection applies to a first lien mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for

a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a first lien mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the first lien mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

As added by P.L.145-2008, SEC.20. Amended by P.L.52-2009, SEC.1.

IC 24-4.4-2-301

Violation of state or federal law, regulation, or rule; enforcement

Sec. 301. (1) A violation of a state or federal law, regulation, or rule applicable to first lien mortgage transactions is a violation of this article.

(2) The department may enforce penalty provisions set forth in 15 U.S.C. 1640 for violations of disclosure requirements applicable to first lien mortgage transactions.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-2-401

License required

Sec. 401. Unless a person subject to this article has first obtained a license from the department, the person shall not regularly engage in Indiana as a creditor in first lien mortgage transactions. However, this article does not require an employee of a person that is licensed under this article to obtain a license to make a first lien mortgage loan.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-2-402

Application for license; issuance; evidence of compliance; criminal background checks; fees; automated central licensing system and repository

Sec. 402. (1) The department shall receive and act on all applications for licenses to engage in first lien mortgage transactions. Applications must be made as prescribed by the director.

(2) A license may not be issued unless the department finds that the financial responsibility, character, and fitness of:

- (a) the applicant and any significant affiliate of the applicant;
- (b) each executive officer, director, or manager of the applicant,

or any other individual having a similar status or performing a similar function for the applicant; and

(c) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant;

are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

(3) The director is entitled to request evidence of compliance with this section at:

(a) the time of application;

(b) the time of renewal of a license; or

(c) any other time considered necessary by the director.

(4) Evidence of compliance with this section may include:

(a) criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for any individual described in subsection (2);

(b) credit histories; and

(c) other background checks considered necessary by the director.

If the director requests a national criminal history background check under subdivision (a) for an individual described in subsection (2), the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (3). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

(5) The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(6) Upon written request, the applicant is entitled to a hearing on the question of the qualifications of the applicant for a license in the manner provided in IC 4-21.5.

(7) The applicant shall pay the following fees at the time designated by the department:

(a) An initial license fee as established by the department under IC 28-11-3-5.

(b) An annual renewal fee as established by the department under IC 28-11-3-5.

(c) Examination fees as established by the department under IC 28-11-3-5.

(8) A fee as established by the department under IC 28-11-3-5 may be charged for each day the annual renewal fee under subsection

(7)(b) is delinquent.

(9) A license issued under this section is not assignable or transferable.

(10) Subject to subsection (11), the director may designate an automated central licensing system and repository, operated by a third party, to serve as the sole entity responsible for:

(a) processing applications and renewals for licenses under this section; and

(b) performing other services that the director determines are necessary for the orderly administration of the department's licensing system under this article.

(11) The director's authority to designate an automated central licensing system and repository under subsection (10) is subject to the following:

(a) The director or the director's designee may not require any person exempt from licensure under this article, or any employee or agent of an exempt person, to:

(i) submit information to; or

(ii) participate in;

the automated central licensing system and repository.

(b) Information stored in the automated central licensing system and repository is subject to the confidentiality provisions of IC 28-1-2-30 and IC 5-14-3. A person may not:

(i) obtain information from the automated central licensing system and repository, unless the person is authorized to do so by statute;

(ii) initiate any civil action based on information obtained from the automated central licensing system if the information is not otherwise available to the person under any other state law; or

(iii) initiate any civil action based on information obtained from the automated central licensing system if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(c) Documents, materials, and other forms of information in the control or possession of the automated central licensing system and repository that are confidential under IC 28-1-2-30 and that are:

(i) furnished by the director, the director's designee, or a licensee; or

(ii) otherwise obtained by the automated central licensing system and repository;

are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director or the director's designee may use the documents, materials, or other information available to the director or the director's designee in furtherance of any action brought in connection with the director's duties under this article.

- (d) Disclosure of documents, materials, and information:
 - (i) to the director or the director's designee; or
 - (ii) by the director or the director's designee;
 under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.
- (e) Information provided to the automated central licensing system and repository is subject to IC 4-1-11.
- (f) This subsection does not limit or impair a person's right to:
 - (i) obtain information;
 - (ii) use information as evidence in a civil action or proceeding; or
 - (iii) use information to initiate a civil action or proceeding;
 if the information may be obtained from the director or the director's designee under any law.
- (g) The director may require a licensee required to submit information to the automated central licensing system and repository to pay a processing fee considered reasonable by the director.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-2-403

Revocation of license; appeal

Sec. 403. (1) A license issued by the department authorizing a person to engage in first lien mortgage transactions under this article may be revoked by the department if the person fails to:

- (a) file any renewal form required by the department; or
- (b) pay any license renewal fee described under section 402 of this chapter;

not later than sixty (60) days after the due date.

(2) A person whose license is revoked under this section may do either of the following:

- (a) Pay all delinquent fees and apply for a new license.
- (b) Appeal the revocation to the department for an administrative review under IC 4-21.5-3. Pending the decision resulting from the hearing under IC 4-21.5-3 concerning the license revocation, the license remains in force.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-2-404

Suspension or revocation of license; order to show cause; immediate suspension pending investigation; order; relinquishment of license; obligations under existing contracts not affected; reinstatement

Sec. 404. (1) The department may issue to a person licensed to engage in first lien mortgage transactions an order to show cause why the person's license should not be revoked or suspended for a period determined by the department. The order must state the place and time for a meeting with the department that is not less than ten (10) days from the date of the order. After the meeting, the

department shall revoke or suspend the license if the department finds that:

- (a) the licensee has repeatedly and willfully violated:
 - (i) this article or any rule or order lawfully adopted or issued under this article; or
 - (ii) any other state or federal law, regulation, or rule applicable to first lien mortgage transactions; or
- (b) facts or conditions exist which would clearly have justified the department in refusing to grant a license had the facts or conditions been known to exist at the time the application for the license was made.

(2) Except as provided in section 403 of this chapter, a revocation or suspension of a license is not authorized under this article unless before instituting proceedings to suspend or revoke the license, the department gives notice to the licensee of the conduct or facts that warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(3) If the department finds that probable cause for revocation of a license exists and that enforcement of this article requires immediate suspension of the license pending investigation, the department may, after a hearing with the licensee upon five (5) days written notice to the licensee, enter an order suspending the license for not more than thirty (30) days.

(4) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and notify the licensee of the revocation or suspension. Not later than five (5) days after the entry of the order the department shall deliver to the licensee a copy of the order and the findings supporting the order.

(5) Any person holding a license to engage in first lien mortgage transactions may relinquish the license by notifying the department in writing of the relinquishment. However, a relinquishment under this paragraph does not affect the person's liability for acts previously committed and coming within the scope of this article.

(6) A revocation, suspension, or relinquishment of a license does not impair or affect the obligation of any preexisting lawful contract between:

- (a) the person whose license has been revoked, suspended, or relinquished; and
- (b) any debtor.

(7) The department may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if the director determines that, at the time the determination is made, there is no fact or condition that exists that clearly would justify the department in refusing to grant a license.

(8) If the director:

- (a) has just cause to believe an emergency exists from which it is necessary to protect the interests of the public; or
- (b) determines that a license was obtained for the benefit of, or

on behalf of, a person who does not qualify for a license; the director may proceed with the revocation of the license under IC 4-21.5-3-6.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-2-405

Record keeping; financial statements; notice to department of certain events or changes

Sec. 405. (1) Every licensee shall maintain records in a manner that will enable the department to determine whether the licensee is complying with this article. The record keeping system of a licensee is sufficient if the licensee makes the required information reasonably available. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. The department shall be given free access to the records wherever the records are located. Records concerning any first lien mortgage transaction shall be retained for two (2) years after the making of the final entry relating to the transaction, but in the case of a revolving first lien mortgage transaction, the two (2) years required under this subsection is measured from the date of each entry relating to the transaction.

(2) A licensee shall file with the department financial statements relating to all first lien mortgage transactions originated by the licensee. The licensee shall file the financial statements as required by the department, but not more frequently than annually, in the form prescribed by the department.

(3) A licensee shall file notification with the department if the licensee:

- (a) has a change in name, address, or any of its principals;
- (b) opens a new branch, closes an existing branch, or relocates an existing branch;
- (c) files for bankruptcy or reorganization; or
- (d) is subject to revocation or suspension proceedings by a state or governmental authority with regard to the licensee's activities;

not later than thirty (30) days after the date of the event described in this subsection.

(4) A licensee shall file notification with the department if a key officer or director of the licensee:

- (a) is under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction; or
- (b) has been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction;

not later than thirty (30) days after the date of the event described in this subsection.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-2-501

Creditor's duty to comply with closing requirements

Sec. 501. A creditor in a first lien mortgage transaction shall comply with IC 6-1.1-12-43, to the extent applicable.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-2-502

Debtor's right to rescind; accruing interest prohibited during rescission period; disbursement of proceeds

Sec. 502. (1) A violation by a creditor in a first lien mortgage transaction of Section 125 of the Federal Consumer Credit Protection Act (15 U.S.C. 1635) (concerning a debtor's right to rescind a transaction) constitutes a violation of this article. A creditor may not accrue interest during the period when a first lien mortgage transaction may be rescinded under Section 125 of the Federal Consumer Credit Protection Act (15 U.S.C. 1635).

(2) A creditor must make available for disbursement the proceeds of a transaction subject to subsection (1) on the later of:

- (a) the date the creditor is reasonably satisfied that the debtor has not rescinded the transaction; or
- (b) the first business day after the expiration of the rescission period under subsection (1).

As added by P.L.145-2008, SEC.20. Amended by P.L.1-2009, SEC.135.